IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 6331 of 1995

For Approval and Signature:

HON'BLE MR JUSTICE KS JHAVERI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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GUJARAT RAJYA SAHAKARI MANDLI KARMACHARI SANGH - Petitioner(s)

Versus

DHUVARAN POWER STATION & 2 - Respondent(s)

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Appearance :
MR DS VASAVADA for Petitioner No(s).: 1.

NOTICE SERVED for Respondent No(s).: 1.
MR BHAVIK JOSHI for MR PRAKASH K JANI for Respondent No(s).: 1,2.
DELETED for Respondent No(s).: 3.
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CORAM : HON'BLE MR JUSTICE KS JHAVERI

Date : 15/07/2005

ORAL JUDGMENT

1.0 The petitioner Union has challenged the award dated

02.06.1995 passed by the Labour Court, Anand in Reference LCD No.9 of 1994, whereby the Labour Court passed the award in terms of the settlement entered into between the parties.

2.0 The brief facts of the case are that the petitioner Union raised a charter of demand against respondent no.1 herein. Since respondent no.1 did not invite the petitioner Union for negotiations, the petitioner raised a dispute under the provisions of the Industrial Disputes Act, 1947. The appropriate Government, in exercise of its powers, referred all the demands for adjudication of the Labour Court, Anand.

2.1 It is the case of the petitioner Union that since respondent no.1 had started victimizing the members of the petitioner Union, it filed Misc. Applications before the Labour Court which came to be allowed. It is the case of the petitioner that before the statement of claim could be filed, one Arvindbhai D. Patel filed an application for taking the matter on board on 02.06.1995. On 02.06.1995 itself, the reference was posted for hearing and the Labour Court passed impugned award in terms of the settlement. Hence, this petition.

3.0 Mr. D S Vasavada learned advocate for the petitioner Union has submitted that the sponsoring Union has not signed the consent terms with all the employees of respondent no.1 who were likely to be affected by the said award. He has submitted that the Labour Court, while recording the terms of settlement and passing the award thereon, has traveled beyond the terms of the reference.

3.1 Mr. Vasavada learned advocate for the petitioner Union has placed reliance on an unreported decision of a Division Bench of this Court dated 28.04.1976 passed in Special Civil Application No.370 of 1976, wherein it has been held that the Industrial Tribunal cannot ignore the sponsoring Union. He has further submitted that in view of the law laid down in the aforesaid decision, the matter may be remanded for adjudication afresh since the employees might get more benefits from the industrial dispute. He has, therefore, submitted that the impugned award passed by Labour Court is illegal and without any jurisdiction and deserves to be quashed and set aside.

4.0 I have heard learned counsel for the parties and perused the documents placed on record. Affidavit in reply on behalf of respondent no.2 has been filed before this Court on 20.08.1995 and it was served on Mr. D S

Vasavada learned advocate for the petitioner Union on 12.09.1995. However, no rejoinder has been filed on behalf of the petitioner Union.

4.1 In the affidavit in reply filed on behalf of respondent no.2, it is stated that each employee of respondent no.1, who was likely to be affected by the award, has accepted the settlement and has also got the benefits pursuant to the said award. Therefore, when the demand of the employees have been fully satisfied as per the settlement between the parties, the petitioner Union has no locus standi to question and agitate the same. Though reply was filed in 1995, no rejoinder has been filed on behalf of the petitioner Union.

4.2 The contention raised by Mr. Vasavada that the matter may be remanded since the employees might get more benefits from the industrial dispute cannot be accepted, when the employees of respondent no.1 themselves have accepted the said settlement. Once the settlement has been accepted by the employees themselves, this Court cannot remand the matter on a mere presumption that since the issue involves an academic question it requires fresh adjudication. Mr. Vasavada is not in a position to assist this Court regarding the status of the Review Application

No.13 of 1995.

4.3 The contention raised by Mr. Vasavada regarding the term of the reference cannot be accepted since the Management of respondent no.1 has not raised this issue before this Court and the petitioner Union has raised it. In my view, the petitioner Union ought not to have challenged the same since it was accepted by all the employees of respondent no.1.

4.4 Apart from that, the petitioner is not a representative Union as laid down by the Apex Court in the case of Bellarpur Collieries Co. v. C.C.I.T., Dhanbad reported in A.I.R. 1972 S.C. pg.1216. The said decision was relied upon by the Division Bench of this Court in the unreported decision referred to herein above which was not produced before the Tribunal. If the said decision would have been produced before the Tribunal, the Tribunal would have followed it. But, at this stage, no fruitful purpose will be served by remanding the matter to the Tribunal. Moreover, in view of the decision

of the Apex Court in the case of State of Uttar Pradesh v. Jalbir Singh reported in 2005 (5) S.C.C. pg.1, it

would not be proper to remand a matter which may result in the disturbance of industrial peace and harmony that has prevailed over a long period of time.

4.5 The decision relied upon by Mr. Vasavada is in no way helpful to the case on hand inasmuch as the said decision would bind the Labour Court. However, before passing the impugned award, it was not pointed out to the Labour Court that such an award could not be passed and that the subsequent application though referred to has not been pressed before it. The said decision has been produced for the first time before this Court only and it was not produced before the Labour Court. In my opinion, if the aforesaid decision dated 28.04.1976 would have been cited before the Labour Court, the Labour Court would not have exercised its jurisdiction. Hence, no error has been committed by the Labour Court.

4.6 Therefore, in view of the above and in view of the affidavit in reply filed on behalf of respondent no.2, I am of the opinion that the matter cannot be remanded on the ground that it involves an academic question and on account of a law declared by this Court. The basic principle of industrial law is to promote industrial peace and harmony. This Court cannot disturb the position

that prevailed over a period of time in view of the subsequent decision of the Apex Court that if majority of the employees have accepted the settlement, the Court should not exercise discretionary relief in writ jurisdiction which might even disturb the industrial peace. Hence, I am of the opinion that the impugned order of Labour Court, Anand is just and proper and requires to be confirmed.

5.0 In the result, this petition is dismissed. The impugned award dated 02.06.1995 passed by the Labour Court, Anand in Reference LCD No.9 of 1994 is confirmed. Rule is discharged with no order as to costs.

(K. S. JHAVERI, J.)

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